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9 IN THE UNITED STATES DISTRICT COURT

10 DISTRICT OF ALASKA

11
12 Sally C. Purser,)
13 Plaintiff,) DEFENDANT BOEHM'S MOTION TO
14 v.) COMPEL FURTHER RESPONSES TO
15 Josef F. Boehm, Allen K.) DEFENDANT JOSEF BOEHM'S SECOND
Bolling, and Bambi Tyree,) SET OF DISCOVERY REQUESTS TO
16 Defendants.) PLAINTIFF
17)
18)
19) CASE NO.: A05-0085 (JKS)

20 **I. DEFENDANT BOEHM SERVED A SECOND SET OF DISCOVERY REQUESTS TO**
21 **PLAINTIFF AND RECEIVED INSUFFICIENT RESPONSES.**

22 On November 10, 2006, Defendant Boehm issued a second set of
23 discovery requests to Plaintiff Sally Purser attached to the
24 Declaration of Brett A. Greenfield as Exhibit "A" and incorporated
25 herein.

26 On December 6, 2006, Purser responded to the discovery evasively,
27 incompletely, and inadequately. Purser's response is attached to the

1 Declaration of Brett Greenfield as Exhibit "B" and incorporated
2 herein.

3 **A. BOEHM'S REQUESTED INTERROGATORIES AND PURSER'S**
4 **INSUFFICIENT RESPONSES.**

5 Plaintiff failed to adequately respond to any of Defendant
6 Boehm's interrogatories. The following is list includes examples of
7 interrogatories that were not answered sufficiently.

8 **Boehm's first interrogatory asked:**

9 1. As to each person identified in your Final Witness List,
10 describe in detail, including, but not limited to the following:

- 11 a. How you first met;
- 12 b. When you first met;
- 13 c. Who introduced you;
- 14 d. Where you first met;
- 15 e. The nature of your relationship, how long it
16 lasted, and why it ended;
- 17 f. That person's knowledge of your alleged sexual
18 contact with Defendant Boehm;
- 19 g. That person's knowledge of your alleged drug use
20 with Defendant Boehm;
- 21 h. That person's facilitating or involvement with the
22 activities described in subsection (f);
- 23 i. That Person's facilitating or involvement with the
24 activities described in subsection (g).

25 Purser's response to interrogatory number one:

26 Question compounding in nature and this information has
27 already been supplied to the Defendant on more than one
28 occasion. Defendant has in his own possession, the
information requested with regard to the Federal Criminal
charges he pled guilty to. The Plaintiff knows of the
witnesses but does not personally know the witnesses,
except for "E.A., Kimberly Swentek, Bambi Tyree, Leslie
Williams, Allen Bolling, Josef Boehm, Paxton Purser and
Gerald Barnes. Some of the these individuals the
Plaintiff met while at Defendant Boehm's home during the
period of 2001-2003. The other witnesses in this action
are doctors and counselors, car providers and Dr. Rose

1 and Francis Gallella which are two experts hired by the
2 Plaintiff. Their vitae's name, addresses and phone
3 numbers have been supplied to the Defendant Boehm twice.

4 Purser's answer is evasive, vague and utterly fails to address
5 the question asked. A specific answer to each subsection is
6 appropriate and assists Boehm to identify which witnesses he will need
7 to potentially subpoena for deposition and assists in narrowing the
8 issues for trial. The requests are fair, non oppressive and are
9 relevant to Purser's claims as well as Boehm's defenses.

10 Boehm has a right to know which of purser's named witnesses can
11 verify her allegations against Boehm, specifically her alleged drug
12 use and sex with him. Purser's testimony to date has been riddled with
13 inaccuracy as has the information she has provided to her own expert.

14 **Boehm's second interrogatory asked:**

15 Identify each and every academic institution you attended,
16 including but not limited to the following:

- 17 a. Name;
18 b. Address;
19 c. Phone number;
20 d. Dates attended;
21 e. Reason for leaving the institution;
22 f. Highest grade level completed;
23 g. Course of studies at each academic institution;
24 h. Suspensions from each academic institutions;
25 i. Expulsions from each academic institution;
26 j. Activities leading to a suspension at each institution;
27 and
28 k. Activities leading to an expulsion at each institution.

26 Purser's response to interrogatory number 2:

1 At the time the Plaintiff met Defendant Boehm
2 she did not attend school. The Plaintiff
3 completed 9th grade and received her GED from "9
4 Star" in March 2005. Plaintiff also attended
5 the Adult Learning Center in Anchorage, Alaska
6 to complete her GED. This institution no
7 longer exists. The Plaintiff was suspended in
8 the 10th grade for suspected drug use. These
9 were allegations but no proof of actual drug
10 use. The Plaintiff decided on her own not to
11 return to school after the suspension.

12 Purser again failed to answer the question. First, the question
13 asked for "every academic institution you attended." Purser only
14 stated two of the institutions she attended and failed to provide any
15 of the requested information for each school.

16 Purser's academic record and behavior problems including drug use
17 are indicative of her personality traits, exposure to drugs and
18 violence and go directly to damages. In addition, Boehm has a right
19 to challenge the representations made at her deposition.

20 Finally it should be noted that Purser claims to have been
21 suspended for suspected drug use, however, told her expert Dr. Rose
22 that it involved drug sales. Her inaccuracies and myriad of changes
23 in testimony make the requests relevant.

24 **Boehm's third interrogatory asked:**

25 Identify all of your criminal convictions **in**
26 **detail** as follows:

- 27 a. date of arrest,
- 28 b. arresting agency,
- c. initial charges,
- d. charges you were convicted of,
- e. sentencing requirements for each conviction, and
- f. probation information.

Purser's response to interrogatory number 3:

The Plaintiff was arrested in May 2004 for misdemeanor possession of crack cocaine and is on Federal Probation until August 2009.

Purser again failed to answer completely. Purser continues to follow the same vague format for answering the interrogatories 4, 5, and 6. These interrogatories and answers are attached as Exhibit A and B respectively and illustrate that Purser's answers were vague, evasive, and incomplete.

III. UNDER RULE FRCP RULE 33(b) (5) AND 37(A) IT IS PROPER FOR THE COURT TO COMPEL COMPLETE AND NON EVASIVE ANSWERS TO DEFENDANT BOEHM'S INTERROGATORIES.

If responses have been served but they contain evasive or incomplete answers, the proper procedure is a motion to compel under Rule 33(B) (5) and Rule 37(a). Rule 33(b) 5 states that "The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory." Further, Rule 37(a) states that "A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure . . ."

Interrogatory functions include obtaining evidence, information which may lead to evidence and admissions, and to narrow issues to be tried. *United States v. West Virginia Pulp and Paper Co.*, 36 F.R.D. 250, 252 (S.D.N.Y.1964). The party answering interrogatories must furnish "such information as is available to the party." F.R .Civ.P. 33(a). F.R.Civ.P. 33(b) (1) requires an interrogatory to be answered

1 "separately and fully in writing under oath, unless it is objected to,
2 in which event the objecting party shall state the reasons for
3 objection and shall answer to the extent the interrogatory is not
4 objectionable. "An" evasive or incomplete . . . answer, or response
5 is to be treated as a failure to . . . answer, or respond." F.R.Civ.P.
6 37(a)(3).

7 "Parties must provide true, explicit, responsive, complete, and
8 candid answers to interrogatories." *Hansel v. Shell Oil Corp.*, 169
9 F.R.D. 303, 305 (E.D.Pa.1996). If a responding party is unable to
10 supply requested information, "the party may not simply refuse to
11 answer, but must state under oath that he is unable to provide the
12 information and 'set forth the efforts he used to obtain the
13 information.'" *Milner v. National School of Health Tech.*, 73 F.R.D.
14 628, 632 (E.D.Pa.1977).

15 There is no "hard and fast rule as to the exact amount of
16 detail a party has to supply in response to a contention
17 interrogatory. The answer to this question can only be determined on
18 a case-by-case basis by attempting to find a reasonable solution as
19 specific problems arise." *Roberts v. Heim*, 130 F.R.D. 424, 427
20 (N.D.Cal.1989). "[E]ach interrogatory has to be judged in terms of
21 its scope and in terms of the overall context of the case at the time
22 it is asked." *Id.* at 427.

23 "The general rule is that answers to interrogatories should be
24 complete in and of themselves, and should not refer to pleadings,
25 depositions, or other documents." *Dipietro v. Jefferson Bank*, 144
26 F.R.D. 279, 282 (E.D.Pa.1992). "Answers to interrogatories should be
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28

1 in such form that they may be used upon a trial, as Rule 33
2 contemplates." *International Mining Co., Inc. v. Allen & Co., Inc.*,
3 567 F.Supp. 777, 787 (S.D.N.Y.1983).

4 Here, Purser relies heavily on other documents to attempt to
5 satisfy her duties to respond. For example, her answer to question
6 one, as stated above, states, "Defendant has in his own possession,
7 the information requested with regard to the Federal Criminal charges
8 he pled guilty to." See *Exhibit A*. Further, her answers are so
9 vague, incomplete and ambiguous it would be impossible to use any of
10 her answers at trial.

11 When a court considers a motion to compel, it must evaluate
12 such factors as timeliness, good cause, utility and materiality. *CSC*
13 *Holdings, Inc. C. Redisi*, 309 F.3d 988, 992 (7th Cir. 2002).

14 Here, Defendant Boehm satisfies all elements. First, his
15 request is timely because it is made within days of receiving a
16 response and is made before the discovery cut off date. Next, there
17 is good cause for the motion to compel because of Purser's long
18 standing refusal to comply with her discovery request and flagrant
19 violation of the Rules of Civil Procedure.

20 A motion to compel may be denied on the ground that the
21 discovery sought would impose an "undue burden" on the responding
22 party (see FRCP 45(c)(3)(a)) or that its benefits are outweighed by
23 its burdens (see FRCP 26(b)(2)(iii)). *CSC Holdings, Inc. v. Redisi*,
24 309 F.3d 988, 993 (7th Cir. 2002). Here there is no undue burden.
25 The questions asked are personal to Ms. Purser as to which she should
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27
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1 have either first hand knowledge or be the one in the easiest position
2 to gain such information.

3 Finally, misleading and evasive answers to interrogatories
4 **justify the court's viewing with suspicion the contentions of the**
5 **party so answering.** [emphasis mine] See, e. g., Alamo Theatre Co.,
6 Inc., et al. v. Loew's Inc., et al., 22 F.R.D. 42 (N.D. Ill.1958);
7 Zielinski v. Philadelphia Piers, Inc., 139 F.Supp. 408 (E.D.Penn.
8 1952). Not only should Purser be compelled to answer, her contentions
9 should now be viewed with suspicion.

10 **IV. BOEHM ATTEMPTED TO MEET AND CONFER**

11 On January 22, 2007, Brett A. Greenfield requested that Darryl
12 Jones indicate whether or not he intended to supplement his client's
13 answers to discover. Mr. Jones failed to respond. A true and correct
14 copy of the January 22, 2007 correspondence is attached to the
15 Declaration of Brett A. Greenfield as Exhibit "C" and incorporated
16 herein.

17
18 **V. AS A RESULT OF PLAINTIFF'S REFUSAL TO ANSWER BOEHM'S**
19 **INTERROGATORIES COMPLETELY, THE COURT SHOULD AWARD BOEHM ATTORNEY**
20 **FEES.**

21 Under FRCP 37(a)(4)(A), defendant Boehm should be awarded
22 reasonable attorney fees. As found in Brett A. Greenfield's
23 declaration, The following is an itemization of the fees and expenses
24 incurred by the moving party in seeking this order to compel
25 discovery:

26 A. Attorney time expended doing research, drafting, and editing
27 notice of motion, motion, points and authorities and
28 declaration: 8 Hours @ \$350.00/hour = \$2,800.00; and

1 B. Paralegal time expended doing research: 10 hours @
2 \$150.00/hour = \$1,500.00.

3 C. Total Expenses: \$4,200.00
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5
6 **V. CONCLUSION**

7 Defendant respectfully requests that this honorable Court compel
8 Plaintiff to answer Defendant Boehm's interrogatories and award
9 Defendant Boehm Attorney fees in the amount of \$4,200.00 for costs
10 incurred.

11 DATED this 24TH day of January, 2007 at Encino, California.
12

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14

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